



# New Mexico Legislative Council Service

## INFORMATION BULLETIN

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### STATE COMPLIANCE WITH *OLMSTEAD* DECISION

#### SUMMARY

This bulletin examines the ramifications of *Olmstead v. L.C. by Zimring*, a case initially filed in Georgia and later appealed to the United States Supreme Court. The decision requires that states provide treatment for individuals with disabilities in the least restrictive environment available, such as a community-based setting rather than an institutional placement. 527 U.S. 581 (1999). *Olmstead* held that the needless isolation of individuals with disabilities constitutes disability-based discrimination in violation of the Americans with Disabilities Act of 1990 (ADA). In 2002, the New Mexico Legislature responded to the *Olmstead* case by approving Senate Joint Memorial 54. The memorial charged the Governor's Committee on Concerns of the Handicapped with leading a task force instrumental in developing a comprehensive state plan to assess the appropriateness of current public institutional placements. Further action and adoption of the plan, already submitted to the appropriate legislative committees, is expected in 2003.

#### ISSUES AND CONCERNS

Since Congress passed the Civil Rights Act of 1964 (CRA), disability rights advocates have struggled to achieve equality for individuals with disabilities. The passage of the ADA made attainable this long-sought goal; however, like other laws, interpretations of terms and provisions differed. For example, critics of the ADA asserted that the law forces employers to hire unqualified people while advocates contended that individuals with disabilities must be equally qualified and meet all job requirements. Another dispute concerned the definition of "program accessibility". 42 U.S.C. 12134. Some people assumed this flexible term authorized the extensive renovation of all government buildings to ensure accessibility, and others concluded that government buildings should be exempt from the requirement for improvements if they result in an undue financial or administrative burden. As frustration with conflicting interpretations grew, advocates and others subjected to the ADA's provisions looked to the courts for clarification. These efforts culminated in *Olmstead*, the historic United

States Supreme Court decision condemning disability-based discrimination.

#### QUICK FACTS

- ▶ Twenty percent of New Mexico's population is potentially affected by the *Olmstead* decision.
- ▶ 15,000 New Mexicans are currently being served by community-based services.
- ▶ 6,000 New Mexicans are on waiting lists for community-based services.
- ▶ 46,000 New Mexicans are not receiving services or on waiting lists but are eligible for community-based services.

**Source:** Interim Legislative Health and Human Services Committee Annual Report, 2002.

#### AMERICANS WITH DISABILITIES ACT OF 1990

The ADA provides that individuals with disabilities have civil rights protections similar to those the CRA gives to individuals on the basis of race, color, sex, national origin, age and religion. The law prohibits discrimination against individuals with disabilities in public accommodations, employment, transportation, state and local government and telecommunications. While the act's key terms "disability" and "program accessibility" seem broad, the ADA permits interpretation on a case-by-case basis. 42 U.S.C. 12102. Thus, the law requires the renovation of public accommodations only if it can be accomplished "without much difficulty or expense" or if no alternative means exist. 42 U.S.C. 12182. Likewise, the ADA dictates policy adjustment only when the modification keeps the basic nature of the program or service intact.

#### THE *OLMSTEAD* DECISION

On June 22, 1999, the United States Supreme Court published its *Olmstead* decision, which held that the ADA prohibits unnecessary institutionalization of individuals with mental illness. The case involved a claim by two women from Georgia with mental illness who were

receiving mental health services in state-run institutions even though their treatment staff believed they would be better served in community-based settings. The women asserted that the state's refusal to provide them with community-based services violated Title 2 of the ADA.

Title 2 requires that states administer their programs "in the most integrated setting appropriate to the needs of the individual". 42 U.S.C. 12182. Or, as the preamble to Title 2 clarifies, the states must provide community-based services in a setting that "enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible". 28 C.F.R. 35.

While disability rights advocates considered the *Olmstead* decision a step toward equitable treatment, the court did not hand the advocates a complete victory. Although the court ruled that institutionalizing individuals with disabilities who can benefit from community-based treatment plans constitutes discrimination, the court determined that Title 2 does not require states to "fundamentally alter" the nature of their programs. 42 U.S.C. 12182. That is, courts must consider both the cost of providing community-based services to individuals with disabilities and the range of programs available. While the court did not definitively dictate a plan for state compliance with the *Olmstead* decision, it did provide a road map for conformance with the ADA's "most integrated setting" requirement. 42 U.S.C. 12182.

### NATIONAL AND STATE TASK FORCE EFFORTS

By early 2002, 42 states and the District of Columbia convened task forces, commissions or state agency work groups to assess the best method of complying with *Olmstead* in light of existing long-term health care needs. Most of these task forces or similar groups focused their energies on drafting comprehensive plans highlighting planning and coordination activities.

The New Mexico Legislature continued this national trend in responding to *Olmstead* with Senate Joint Memorial 54 in February 2002, which charged the Governor's Committee on Concerns of the Handicapped with leading a task force responsible for developing a comprehensive plan to integrate individuals with disabilities into society. This plan, developed with input from individuals with disabilities and their family members, as well as service providers, would examine options for placing individuals with disabilities in less restrictive settings. Senate Joint Memorial 54 also required that the task force establish a waiting list for long-term community-based services that

moves at a reasonable pace. As instructed, the task force submitted its set of recommendations to the interim Legislative Health and Human Services Committee meeting for review and comment. The Governor's Committee on Concerns of the Handicapped anticipates further legislative response to Senate Joint Memorial 54 in 2003.

### NEW MEXICO LAWSUIT

*Lewis v. New Mexico Department of Health*, filed in January 1999, shortly before the Supreme Court handed down the *Olmstead* decision in June 1999, alleged that New Mexico violated the ADA by refusing Medicaid services to 3,000 otherwise qualified individuals with disabilities, which caused them to either forfeit Medicaid services or enter institutions. 26 F. 3d 970 (10th Cir. 2001). The trial phase of the lawsuit was scheduled to begin in spring 2003. Advocates across the country will be closely watching the *Lewis* case. Not only will the final decision influence Medicaid eligibility, but the ruling will determine whether the ADA requires that New Mexico provide Medicaid services to all eligible individuals with reasonable promptness.

### OLMSTEAD AND THE MEDICAID PROGRAM

The *Olmstead* decision is only inadvertently about Medicaid. In fact, the court pays little attention to Medicaid and does not intend for its ruling to alter the basic nature of the health care program. Instead, *Olmstead* requires that the states remedy improper institutionalization and formally assess intake and admissions procedures to ensure that the states serve individuals with disabilities in the least restrictive settings possible. Because the *Olmstead* case concerns long-term care placement and Medicaid comprises the majority of state long-term care budgets, states rely on the Medicaid program as a vital tool in satisfying *Olmstead*. Many state plans have, therefore, focused extensively on altering their Medicaid programs through the periodic review of services in Medicaid-funded institutional settings or by using Medicaid funds to provide appropriate community-based services to individuals with disabilities. But these and other changes are a consequence, and not a requirement, of the *Olmstead* ruling. Nonetheless, *Olmstead* substantially impacts the implementation of the Medicaid program.

### NEXT STEPS

In 2002, Congress allocated \$50 million to the states with the Real Choice Systems Change grant initiative, which

promotes the delivery of community-based services. The Medical Assistance Division of the Human Services Department received \$1.38 million of the grant money. The department will disperse the funds to agencies across the state in 2003 for the development of training programs aimed at transitioning people with disabilities into mainstream society through a request for proposal system, which the department has not yet established.

Three memorials from New Mexico's 2003 legislative session also recognized the needs of individuals with disabilities:

- ▶ House Memorial 14 proclaimed February 12, 2003 as "Disability Awareness Day at the Legislature". The
- ▶ memorial declared legislative support for programs that serve individuals with disabilities in their own communities and charged each state agency with coordinating disability-based programs more effectively.
- ▶ House Memorial 4 expressed recognition of the people who staff community-based settings and work with individuals with disabilities on a daily basis. The memorial also instructed that certain community-based care providers receive copies of the legislation.
- ▶ House Joint Memorial 52 directed the Department of Health to conduct public hearings and develop a plan to address the long-term care needs of individuals with traumatic brain injury. The memorial required that the department report its findings and recommendations at the interim Legislative Health and Human Services Committee meeting in October 2003.

State <i>Olmstead</i> Comprehensive Plans			
Issued plans or reports in late 2000 or 2001	Released plans or reports in 2002	Currently working on plans or reports for release in 2003	Currently have task forces but do not intend to write plans or reports
Arizona	Arkansas	Alabama (January 2003)	Alaska
Indiana	Connecticut	California (April 2003)	Florida
Iowa	Delaware	Colorado (2003)	Pennsylvania
Maryland	Hawaii	Louisiana (January 2003)	District of Columbia
Mississippi	Illinois	Maine (March 2003)	
Missouri	Kentucky	Nevada (June 2003)	
Montana	Massachusetts	New Jersey (January 2003)	
Ohio	Utah	New Mexico (2003)	
South Carolina	Washington	North Carolina (2003)	
Texas	Wisconsin	Oklahoma (July 2003)	
	Wyoming	Virginia (August 2003)	
		West Virginia (2003)	

**Source:** National Conference of State Legislatures, January 2003.

**REFERENCE LIST**

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In addition to other noted sources, this document, written by Leslie Schaar, contains information obtained from Raul Burciaga and Roxanne Knight and excerpts from the report presented to the 2002 interim Legislative Health and Human Services Committee, prepared by Phil Lynch. For more information, contact the Legislative Council Service at (505) 986-4600. This document does not represent a policy statement of the Legislative Council Service or its staff.

**Additional Bulletins**

No. 1. Public School Capital Outlay Events and Accomplishments

No. 2. Introduction to New Mexico Water History and Terminology

No. 3. Medicaid Growth

No. 4. Medicaid Reform Committee Recommendations

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